

DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER BUREAU

WATER RESOURCES PROTECTION

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These rules take effect 7 days after filing with the Secretary of State

(By authority conferred on the department of environmental quality by sections 3103 and 3106 of 1994 PA 451, MCL 324.3103 and 324.3106)

R 323.2102, R 323.2103, R 323.2104, R 323.2108, R 323.2109, and R 323.2189 of the Michigan Administrative Code are amended and R 323.2196 is added to the code as follows:

PART 21. WASTEWATER DISCHARGE PERMITS

R 323.2102 Definitions; A to F.

Rule 2102. As used in this part:

(a) "Act" means 1994 PA 451, MCL 324.3101 et seq., and the rules promulgated under the act.

(b) "Animal feeding operation (AFO)" means a lot or facility, other than an aquatic animal production facility, where the animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(c) "Applicant" means a person who applies to the department for a state or national permit to discharge waste or wastewaters into the waters of the state by an NPDES application form or a state permit application form.-

(d) "Application" means either the uniform national NPDES application form, including subsequent additions, revisions, or modifications thereof, promulgated by the administrator of EPA and adopted for use by the department or a state permit application form for applying for a permit.

(e) "Approved control plan" means the plan which is prepared by an authorized public agency, which is approved by the department pursuant to the provisions of section 9110 of part 91 of the act, and which contains the soil erosion and sedimentation control procedures that govern all construction activities normally undertaken by the authorized public agency.

(f) "Authorized public agency" means a state, local, or county agency that is designated pursuant to the provisions of section 9110 of part 91 of the act to implement soil erosion and sedimentation control requirements with regard to construction activities undertaken by the agency.

(g) "Authorized representative" means a person who has written authorization from the construction permittee to sign the notice of coverage in the name of the construction permittee.

(h) "Certified storm water operator" means an individual who has been certified by the department pursuant to the provisions of section 3110 of part 31 of the act as properly qualified to operate treatment or control facilities for storm water discharges.

(i) "Concentrated animal feeding operation (CAFO)" means an AFO that is defined as a large CAFO or a medium CAFO, or that is designated by the department under

November 4, 2004

R 323.2196(3) as a medium CAFO or a small CAFO. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(j) "CAFO process wastewater" means water directly or indirectly used in the operation of a CAFO for any of the following:

- (i) Spillage or overflow from animal or poultry watering systems.
- (ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.
- (iii) Direct contact swimming, washing, or spray cooling of animals.
- (iv) Dust control.

(v) Any water which comes into contact with, or is a constituent of, any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(k) "Construction activity" means a man-made earth change or disturbance in the existing cover or topography of land for which a national permit is required pursuant to the provisions of 40 C.F.R. §122.26(a) (2000) and which is any of the following:

- (i) Five acres or more in size and defined as a construction activity pursuant to the provisions of 40 C.F.R. §122.26(b)(14)(x) (2000).
- (ii) One acre or more in size and defined as a small construction activity pursuant to the provisions of 40 C.F.R. §122.26(b)(15) (2000).
- (iii) Less than 1 acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more.

The term includes clearing, grading, and excavating activities. The term does not include the practices of clearing, plowing, and tilling soil and harvesting for the purpose of crop production.

(l) "Construction permittee" means a person who is deemed to have a national permit pursuant to the provisions of R 323.2190 and who owns or holds a recorded easement on the property where a construction activity is located, is constructing in a public right-of-way in accordance with the provisions of sections 13, 14, 15, and 16 of 1925 PA 368, MCL 247.183, 247.184, 247.185, and 247.186, or is the authorized public agency if a construction activity is carried out by the authorized public agency.

(m) "Department" means the director of the department of environmental quality or his or her designee to whom the director delegates a power or duty by written instrument.

(n) "Discharge" means any direct or indirect discharge of any waste, waste effluent, wastewater, pollutant, or any combination thereof into any of the waters of the state or upon the ground.

(o) "Discharger" means any person who discharges, directly or indirectly, any substance defined by section 3109 of part 31 of the act, any treated or untreated waste, waste effluent, wastewater, or pollutant; or cooling waters into any of the waters of the state or upon the ground.

(p) "Draft permit" means a draft of a permit which is proposed to be issued by the department, which is prepared by staff of the department before public notice of an application for a permit by a discharger, and which contains proposed effluent standards and limitations, proposed compliance schedules, and other proposed conditions or restrictions deemed necessary by the department for a discharge.

(q) "Effluent standards and limitations" means all state or federal effluent standards and limitations on quantities, rates, and concentrations of chemical, physical, biological, and other constituents to which a waste or wastewater discharge may be subject under the federal act or part 31 of the act, including all of the following:

- (i) Effluent limitations.
- (ii) Standards of performance.
- (iii) Toxic effluent standards and prohibitions.

- (iv) Pretreatment standards.
- (v) Schedules of compliance.
- (r) "EPA" means the United States environmental protection agency.
- (s) "Fact sheet" means a description of a discharge which is available to the public, which is prepared by the department pursuant to the guidelines, and which includes all of the following information:
  - (i) Information on the location of the discharge.
  - (ii) Rate or frequency of the discharge.
  - (iii) Components of the discharge.
  - (iv) Proposed determinations of the department regarding the discharge.
  - (v) The location and identification of uses of the receiving waters.
  - (vi) Water quality standards and procedures for formulation of final determinations on the discharge by the department.
- (t) "Federal act" means the federal water pollution control act, commonly referred to as the clean water act, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, Public Law 97-1171, and Public Law 100-4, 33 U.S.C. §1251 et seq., and the rules and regulations promulgated thereunder.

R 323.2103 Definitions; G to O.

Rule 2103. As used in this part:

- (a) "General permit" means a national permit issued authorizing a category of similar discharges.
- (b) "Guidelines" means the federal guidelines promulgated by EPA entitled "Part 123 - State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System," 40 C.F.R. §123 et seq. (1984).
- (c) "Illicit connection" means a physical connection to a separate storm sewer that primarily conveys non-storm water discharges other than uncontaminated groundwater into the storm sewer; or a physical connection not authorized or permitted by the local authority, where a local authority requires authorization or a permit for physical connections.
- (d) "Illicit discharge" means any discharge to, or seepage into, a separate storm sewer that is not composed entirely of storm water or uncontaminated groundwater. Illicit discharges include non-storm water discharges through pipes or other physical connections; dumping of motor vehicle fluids, household hazardous wastes, domestic animal wastes, or litter; collection and intentional dumping of grass clippings or leaf litter; or unauthorized discharges of sewage, industrial waste, restaurant wastes, or any other non-storm water waste directly into a separate storm sewer.
- (e) "Industry" means a private person, corporation, firm, plant, or establishment that directly or indirectly discharges waste or wastewater into the waters of the state.
- (f) "Land application area" specifically for CAFOs means land under the control of an AFO owner or operator, whether it is owned, rented, leased, or subject to an access agreement to which production area waste or CAFO process wastewater is or may be applied. Land application area includes land not owned by the AFO owner or operator but the AFO owner or operator has control of the land application of production area waste or CAFO process wastewater.
- (g) "Large CAFO" is an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:
  - (i) 700 mature dairy cows, whether milked or dry.
  - (ii) 1,000 veal calves.
  - (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow/calf pairs.
  - (iv) 2,500 swine each weighing 55 pounds or more.

- (v) 10,000 swine each weighing less than 55 pounds.
- (vi) 500 horses.
- (vii) 10,000 sheep or lambs.
- (viii) 55,000 turkeys.
- (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system.
- (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.
- (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system.
- (xii) 30,000 ducks, if the AFO uses other than a liquid manure handling system.
- (xiii) 5,000 ducks, if the AFO uses a liquid manure handling system.
- (h) "Local limit" means a specific prohibition or limit on discharges of pollutants or pollutant parameters by a nondomestic source to a POTW that are set by a POTW in accordance with an approved pretreatment program.
- (i) "Mailing list" means a permanent list of persons who request notification and information on public hearings, permits, and other NPDES forms that is prepared and maintained by the department pursuant to the guidelines, these rules, and 1969 PA 306, MCL 24.201 et seq.
- (j) "Management agency" means an areawide waste treatment management agency that is designated by the governor pursuant to the provisions of section 208(a) of the federal act.
- (k) "Manure" is defined to include manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.
- (l) "Maximum extent practicable" or "MEP" means implementation of best management practices by a public body to comply with an approved storm water management program as required in a national permit for a municipal separate storm sewer system, in a manner that is environmentally beneficial, technically feasible, and within the public body's legal authority.
- (m) "Medium CAFO" is defined as the following:
  - (i) Is an AFO that stables or confines the numbers of animals specified in any of the categories listed in subdivision (ii) of this subrule, and any of the following are met:
    - (A) Has been designated by the department as a CAFO under R 323.2196(3).
    - (B) Pollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance.
    - (C) Pollutants are discharged directly into waters of the state from the production area which originate outside of and pass over, across, or through the facility or that otherwise come into direct contact with the animals confined in the operation.
  - (ii) Includes the following number and type of animals:
    - (A) 200 to 699 mature dairy cows, whether milked or dry.
    - (B) 300 to 999 veal calves.
    - (C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow/calf pairs.
    - (D) 750 to 2,499 swine each weighing 55 pounds or more.
    - (E) 3,000 to 9,999 swine each weighing less than 55 pounds.
    - (F) 150 to 499 horses.
    - (G) 3,000 to 9,999 sheep or lambs.
    - (H) 16,500 to 54,999 turkeys.
    - (I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system.
    - (J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.
    - (K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system.
    - (L) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system.

(M) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system.

(n) "Minor discharge" means a discharge of wastewater which has a total volume of less than 50,000 gallons on every day of the year, which does not affect the waters of another state, and which is not identified by the department, the regional administrator, or by the administrator of EPA, in regulations issued by him or her pursuant to the provisions of section 307(a) of the federal act, as a discharge which is not a minor discharge, except that a discharge is not a minor discharge if there is a discharge of less than 50,000 gallons on any day of the year which represents 1 of 2 or more discharges from a single person, municipality, or industry that, in total, is more than 50,000 gallons on any day of the year.

(o) "Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are owned or operated by the United States, a state, city, village, township, county, district, association, or other public body created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law, such as a sewer district, flood control district, or drainage district, or similar entity, or a designated or approved management agency under section 208 of the federal act that discharges to waters of the state. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(p) "National permit" means an NPDES permit, or equivalent document or requirements, issued by the department to a discharger pursuant to sections 3106 and 3112 of part 31 of the act for discharges into surface waters.

(q) "New source" means a building, structure, facility, or installation from which waste, pollutants, or wastewater is or may be discharged into the surface or groundwaters of the state or on the ground and for which construction was commenced after publication of proposed regulations by EPA prescribing a standard of performance pursuant to the provisions of section 306(a) of the federal act that will be applicable to the source if the standard is thereafter promulgated in accordance with the provisions of section 306 of the federal act.

(r) "Noncompliance list" means a list of dischargers, which is prepared by the department pursuant to these rules and the guidelines for transmittal to the regional administrator, who fail or refuse to comply with a compliance schedule in a permit issued pursuant to part 31 of the act.

(s) "Nondomestic source" or "source of nondomestic wastewater" means an industry, commercial establishment, or other entity that discharges wastewater to a publicly owned treatment works other than, or in addition to, water-carried wastes from toilet, kitchen, laundry, bathing, or other facilities that are used for household purposes.

(t) "NPDES" means the national pollutant discharge elimination system established by the federal act.

(u) "NPDES form" means any issued permit and any uniform national form which is used by the department, which is developed for use in the NPDES, and which is prescribed in regulations promulgated by the administrator of EPA, including an NPDES application and a reporting form.

(v) "On-site disposal system" means a natural system or mechanical device used to collect, treat, and discharge or reclaim wastewater from 1 or more dwelling units without the use of community-wide sewers or a centralized treatment facility.

R 323.2104 Definitions; P to W.

Rule 2104. As used in this part:

(a) "Part 91 permitting entity" means an agency that is designated by a county board of commissioners pursuant to the provisions of section 9105 of part 91 of the act; an agency that is designated by a city, village, or township in accordance with the provisions of section 9106 of part 91 of the act; or the department if the construction activity is under the jurisdiction of 2 or more municipal or county enforcing agencies; or the department for soil erosion and sedimentation activities under part 615 or part 631 pursuant to the provisions of section 9115 of part 91 of the act.

(b) "Person" means an individual, partnership, association, corporation, industry, or public body.

(c) "Point source discharge" means a discharge that is released to the waters of the state by a discernible, confined, and discrete conveyance, including any of the following from which wastewater is or may be discharged:

- (i) A pipe.
- (ii) A ditch.
- (iii) A channel.
- (iv) A tunnel.
- (v) A conduit.
- (vi) A well.
- (vii) A discrete fissure.
- (viii) A container.
- (ix) A concentrated animal feeding operation.
- (x) A vessel or other floating craft.

The term does not include a legally established county or intercounty drain, except for a county or intercounty drain that has a POTW designated as part of the drain or a discharge otherwise required to be authorized by a national permit.

(d) "Production area" means that part of an AFO that includes animal confinement area, manure storage area, raw materials storage area, and waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(e) "Production area waste" means manure and any waste from the production area and any precipitation (e.g., rain or snow) which comes into contact with, or is contaminated by, manure or any of the components listed in the definition for "production area." Production area waste does not include water from land application areas.

(f) "Public body" means the United States, the state of Michigan, city, village, township, county, school district, public college or university, single purpose governmental agency; or any other body which is created by federal or state statute or law.

(g) "Publicly owned treatment works" or "POTW" means either of the following:

(i) A facility or facilities which are owned by a governmental entity and which are used or intended to be used for the collection and treatment of municipal wastewater, including sewage, liquid industrial waste, and storm water.

(ii) The owner or owners of a facility or facilities specified in paragraph (i) of this subdivision.

- (h) "Regional administrator" means the EPA region V administrator.
- (i) "Regulated MS4" means an MS4 that is required to have a national permit to discharge storm water into surface waters of the state pursuant to R 323.2161(c), (d), (e), or (f).
- (j) "Regulated pollutants" means all of the following:
  - (i) Pollutants that are limited by categorical pretreatment standards as defined in R 323.2302(g).
  - (ii) Pollutants for which control measures on nondomestic sources are necessary to avoid noncompliance with effluent limitations established in the POTW's discharge permit.
  - (iii) Pollutants for which control measures on nondomestic sources are necessary to avoid restricting the POTW's approved residuals management program.
  - (iv) Pollutants for which control measures on nondomestic sources are necessary to avoid operational problems at the treatment facility or collection system.
- (k) "Reporting form" means the uniform NPDES reporting form, including subsequent additions, revisions, or modifications thereof, which is promulgated by the administrator of EPA and which is adopted by the department for use in administering these rules, or a state form that is prescribed by the department for use in administering these rules, for reporting data and information to the department by a discharger on monitoring and other conditions of permits.
- (l) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.
- (m) "Separate storm sewer system" means a system of drainage, including, but not limited to, roads, catch basins, curbs, gutters, parking lots, ditches, conduits, pumping devices, or man-made channels, which has the following characteristics:
  - (i) The system is not a combined sewer where storm water mixes with sanitary wastes.
  - (ii) The system is not part of a publicly owned treatment works (POTW).
- (n) "Site" means the area where a construction activity is physically located or conducted, including adjacent land that is used in connection with the construction activity.
- (o) "Small CAFO" means an AFO that is designated a CAFO by the department under R 323.2196(3) and is not a medium CAFO.
- (p) "Soil erosion and sedimentation control permit" means a permit that is issued pursuant to the provisions of part 91 of the act by a part 91 permitting entity.
- (q) "Soil erosion control measures" means the measures or procedures to prevent or reduce the pollution of waters of the state that are required in the soil erosion and sedimentation control permit for the site or the selected control measures from the approved control plan that are applicable to the site.
- (r) "Stabilization of earth change activity" means the proper placement, grading, or covering of soil or rock at a construction activity to ensure subsequent resistance to soil erosion, sliding, or other earth movement.
- (s) "State permit" means a permit or equivalent document or requirements that are issued by the department to a discharger who discharges wastewater on the ground or into groundwaters.
- (t) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.
- (u) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the national permits program under 40 C.F.R. §122.3 and §122.27 (2000). For the categories of industries identified in this subdivision, the term includes, but is not limited to, all of the following:
  - (i) Storm water discharges from industrial plant yards.

(ii) Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility.

(iii) Material handling sites.

(iv) Refuse sites.

(v) Sites used for the application or disposal of process waste waters, as defined at 40 C.F.R. §401.11 (2000).

(vi) Sites used for the storage and maintenance of material handling equipment.

(vii) Sites used for residual treatment, storage, or disposal.

(viii) Shipping and receiving areas.

(ix) Manufacturing buildings.

(x) Storage areas, including tank farms, for raw materials and intermediate and final products.

(xi) Areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the purposes of this subdivision, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product.

The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the areas described in this paragraph. Industrial facilities include facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the following paragraphs and those facilities designated by the department under the provisions of R 323.2161(1)(f). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subdivision:

(A) Facilities subject to EPA promulgated storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, except facilities that have toxic pollutant effluent standards which are exempted under paragraph (x) of this subdivision.

(B) Facilities classified as standard industrial classifications 24, except 2434, 26, except 265 and 267, 28, except 283, 29, 311, 32, except 323, 33, 3441, 373.

(C) Facilities classified as standard industrial classifications 10 through 14, mineral industry, including active or inactive mining operations, except for areas of non-coal mining operations which were released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of operations. Inactive mining operations are mining sites which are not being actively mined, but which have an identifiable owner/operator. Inactive mining sites do not include sites where mining claims are being maintained before disturbances associated with the extraction, beneficiation, or processing of mined materials and do not include sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(D) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle c of the federal resource conservation and recovery act.

(E) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, waste that is received from any of the facilities described under this subdivision, including those that are subject to regulation under subtitle D of the federal resource conservation and recovery act.



(F) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, which are classified as standard industrial classification 5015 and 5093.

(G) Steam electric power generating facilities, including coal handling sites.

(H) Transportation facilities classified as standard industrial classifications 40, 41, 42, except 4221 to 25, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication; equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) to (vii), (ix), or (x) of this subdivision are associated with industrial activity.

(I) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, provided the system has a design flow of 1.0 million gallons per day or more, or is required to have an approved federal pretreatment program under 40 C.F.R. part 403 (2000). Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the federal act.

(J) Facilities under standard industrial classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31, except 311, 323, 34, except 3441, 35, 36, 37, except 373, 38, 39, and 4221 to 25.

(v) "Total maximum daily load" or "TMDL" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

(w) "Trade secret" means the whole or any portion or phase of any manufacturing proprietary process or method which is not patented, which is secret, which is useful in compounding an article of trade that has a commercial value, and the secrecy of which the owner has taken reasonable measures to prevent from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. "Trade secret" shall not be construed, for purposes of these rules, to include any information relative to the quantum and character of waste products or their constituents discharged or sought to be discharged into waters of this state.

(x) "Urbanized area" means a place and the adjacent densely populated territory that together have a minimum population of 50,000 people, as defined by the United States bureau of the census and as determined by the latest available decennial census.

(y) "Urbanizing area" means an area of contiguous census blocks with population densities of 1,000 persons or more per square mile that together have a population of 10,000 people or more, as determined by the latest available decennial census.

(z) "Vessel" means any contrivance that is used or capable of being used for navigation upon water, whether or not the contrivance is capable of self-propulsion, including any of the following:

(i) Foreign and domestic vessels that are engaged in commerce upon the waters of the state.

(ii) Passenger or other cargo-carrying vessels.

(iii) Privately owned recreational watercraft.

(iv) Any other floating craft.

(aa) "Waste" means any waste, wastewater, waste effluent, or pollutant that is discharged into water, including any of the following:

(i) Dredged spoil.

- (ii) Solid waste.
- (iii) Incinerator residue.
- (iv) Sewage.
- (v) Garbage.
- (vi) Sewage sludge.
- (vii) Munitions.
- (viii) Chemical wastes.
- (ix) Biological materials.
- (x) Radioactive materials.
- (xi) Heat.
- (xii) Wrecked or discarded equipment.
- (xiii) Rock.
- (xiv) Sand.
- (xv) Cellar dirt.
- (xvi) Industrial, municipal, and agricultural waste.

(bb) "Wastewater" means liquid waste discharges directly or indirectly into the waters of the state that result from industrial and commercial processes and municipal operations, including liquid or water-carried process waste, cooling and condensing waters, and sanitary sewage.

(cc) "Water quality standards" means the part 4 water quality standards promulgated pursuant to part 31 of 1994 PA 451, as amended, being R 323.1041 to 323.1117 of the Michigan administrative code.

#### R 323.2108 Permits; application and filing procedures.

Rule 2108. (1) An application for a permit shall be completed in accordance with and subject to guidelines in 40 C.F.R. §122.21(2003).

(2) A person discharging waste or wastewater from more than 1 location shall file a separate application for each discharge location. A single application may be filed for multiple outfalls discharging from a single location, except that the discharge from each outfall shall be described separately in the application.

#### R 323.2109 Permits; application exemptions.

Rule 2109. A person who discharges or proposes to discharge the following types of waste or wastewater shall not be required to apply for a permit from the department pursuant to part 31 of the act or these rules:

- (a) Human sewage that is discharged from vessels.
- (b) Water, gas, and other materials that are injected into a well to facilitate the production of oil or gas, or water that is derived in association with oil or gas production and disposed of in a well if authorized by the state supervisor of wells.
- (c) A discharge that is directed solely to a publicly owned treatment works, but not from a publicly owned treatment works.
- (d) Point source discharges of storm water, unless a person is required to apply for a national permit pursuant to R 323.2161 or R 323.2196.

#### R 323.2189 Referenced federal regulations; definitions; adoption of standards by reference.

Rule 2189. (1) As used in the federal regulations referenced in R 323.2161, the terms "NPDES state" and "NPDES authority" shall mean the department of environmental quality as specified in this rule.

(2) The following federal regulations are adopted by reference in these rules, are available for inspection at the Lansing office of the department of environmental quality, and may be obtained from the Department of Environmental Quality, Water Division, P.O. Box 30273,

Lansing, MI 48909, at a cost as of the time of adoption of these rules of 5 cents per page and a labor rate of \$19.20 per hour, or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost as of the time of the adoption of these rules of \$66.00, or via the Internet at <http://www.access.gpo.gov/nara>:

- (a) 40 C.F.R. §§122.3(e) (2000).
- (b) 40 C.F.R. §122.7. (2000).
- (c) 40 C.F.R. §§122.21 (2003).
- (d) 40 C.F.R. §122.26 to 27 (2000).
- (e) 40 C.F.R. §122.28(b)(2)(v) (2000).
- (f) 40 C.F.R. §122.34 to 35 (2000).
- (g) 40 C.F.R. §§122.41 to 122.49 (2000).
- (h) 40 C.F.R. §122, appendix G (2000).
- (i) 40 C.F.R. §123 et seq. (1984).
- (j) 40 C.F.R. §401.11 (2000).
- (k) 40 C.F.R. §403 (2000).
- (l) 40 C.F.R. §412 (2003) except that the definition for “land application area” shall be as defined in R 323.2103(f).

R 323.2196 CAFO permits.

Rule 2196. (1) CAFOs are point sources that require NPDES permits for discharges or potential discharges and require all of the following:

(a) If an operation becomes a CAFO, then the NPDES requirements for CAFOs apply to all animals in confinement at the operation and all production area waste and CAFO process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(b) All CAFO owners or operators shall apply either for an individual NPDES permit, or a certificate of coverage under an NPDES general permit, unless the owner or operator has received a determination from the department, made after providing notice and opportunity for public comment, that the CAFO has “no potential to discharge” pursuant to subrule (4) of this rule.

(c) The discharge to waters of the state from land application areas is a discharge from the CAFO subject to NPDES permit requirements.

(2) The schedule for permit application, coverage, and renewal shall include all of the following:

(a) A CAFO shall apply for an NPDES permit not later than the effective date of these rules, except as specified in subdivisions (b), (d), or (e) of this subrule.

(b) An existing CAFO, or an existing AFO that becomes a CAFO, that has not had a regulated discharge since January 14, 2000, shall apply for coverage under NPDES general permit no. MIG440000 (effective January 1, 2003), or equivalent document approved by the department, not later than 90 days after notification by the department or by September 1, 2005, whichever is sooner. Before July 1, 2007, all CAFOs that are operating under an equivalent document approved by the department shall apply for an NPDES permit. An existing CAFO or existing AFO is any CAFO or AFO that is constructed and populated before January 30, 2004.

(c) For the purposes of subdivision (b) of this subrule, a regulated discharge is any of the following:

(i) A discharge that causes or contributes to a violation of R 323.1041 to R 323.1117 of the water quality standards.

(ii) A discharge from the process or production area due to precipitation events, either by overland, drainage tiles, or other mechanisms, except the discharge of uncontaminated

runoff that does not come into contact with any animals, animal waste, or production area waste.

(iii) A dry-weather discharge, including an accidental release.

(d) Newly constructed CAFOs shall apply for an NPDES permit at least 180 days before commencing operation.

(e) AFOs that become CAFOs after September 1, 2005, shall apply for an NPDES permit at least 180 days before becoming a CAFO.

(f) For AFOs that are designated as CAFOs per subrule (3), the CAFO shall apply for an NPDES permit no later than 90 days after receiving notification of the designation.

(g) Not later than 180 days before the expiration of the permit or equivalent document approved by the department, the permittee shall submit an application to renew its permit. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if both of the following conditions are true:

(i) The facility has ceased operation or is no longer a CAFO.

(ii) The permittee has demonstrated to the satisfaction of the department that there is no remaining potential for a discharge.

(3) In designating an AFO as a CAFO, the following apply:

(a) The department may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the state. In making this designation, the department shall consider all of the following factors:

(i) The size of the AFO and the amount of production area waste and CAFO process wastewater reaching waters of the state.

(ii) The location of the AFO relative to waters of the state.

(iii) The means of conveyance of production area waste and CAFO process wastewater into waters of the state.

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of production area waste and CAFO process wastewater into waters of the state.

(v) Other relevant factors.

(b) An AFO shall not be designated under this subrule unless the department has conducted an inspection of the operation.

(c) An AFO with numbers of animals below those established in R 323.2103(m) shall not be designated as a CAFO unless either of the following occurs:

(i) Pollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance.

(ii) Pollutants are discharged from the production area directly into waters of the state which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(4) In making determinations for no potential to discharge for large CAFOs, all of the following apply:

(a) The department, upon request, may make a determination that a specific large CAFO has no potential to discharge pollutants to waters of the state. In making this determination, the department shall consider the potential for discharges from both the production area and any land application areas. The department shall also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have no potential to discharge if it has had a discharge within 5 years before the date of the request submitted under subdivision (b) of this subrule. For purposes of this rule, the term 'no potential to discharge' means that there is no potential for any CAFO production area waste or CAFO process wastewater to be added to waters of the state under any circumstance or climatic condition. A determination that there is no potential to discharge only relates to discharges of production area waste and CAFO process wastewater covered by this rule.

(b) In requesting a determination of no potential to discharge, the CAFO owner or operator shall submit any information that will support such a determination. Such information shall include all of the information specified in 40 C.F.R. §§122.21(f) and (i)(1)(i) to (ix) (2003) and include documentation showing that the CAFO has been verified under the livestock system of the Michigan agriculture environmental assurance program (MAEAP), or successor program, if such a program is available. The department has discretion to require additional information to supplement the request, and may also gather additional information through physical inspection of the CAFO.

(c) Before making a final decision to grant a no potential to discharge determination, the department shall issue a notice to the public stating that a no potential to discharge request has been received. This notice shall be accompanied by a fact sheet which includes the following, if applicable:

(i) A brief description of the type of facility or activity which is the subject of the no potential to discharge determination.

(ii) A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination.

(iii) A description of the procedures for reaching a final decision on the no potential to discharge determination.

The department shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of or against a no potential to discharge determination and any other data gathered by the department.

The department shall notify any CAFO seeking a no potential to discharge determination of its final determination within 180 days of receiving the request.

(d) The owner or operator shall request a no potential to discharge determination by the applicable permit application dates. If the department's final decision is to deny the no potential to discharge determination, then the owner or operator shall seek coverage under a permit within 30 days after notice of the denial.

(e) The no potential to discharge determination does not relieve the CAFO from the consequences of an actual discharge. Any unpermitted CAFO that discharges pollutants into the waters of this state is in violation of the act even if it has received a no potential to discharge determination from the department. Any CAFO that has received a determination of no potential to discharge, but who anticipates changes in circumstances that could create the potential for a discharge, shall contact the department and apply for and obtain NPDES permit authorization prior to the change of circumstances. If any CAFO that has received a determination of no potential to discharge has unanticipated changes in circumstances that could create the potential for a discharge, then the CAFO shall immediately notify the department and submit a complete application for coverage under an NPDES permit within 30 days after the change in circumstances.

(f) Where the department has issued a determination of no potential to discharge, the department retains the authority to subsequently require NPDES permit coverage for any of the following:

(i) If circumstances at the facility change.

(ii) If new information becomes available.

(iii) If there is another reason for the department to determine that the CAFO has a potential to discharge.

(g) Notwithstanding any other provision of this section, a CAFO that has received a no potential to discharge determination from the department is not required to seek coverage under an NPDES permit that would otherwise be required.

(5) CAFO NPDES permits shall include all of the following:

(a) A requirement to develop and implement a comprehensive nutrient management plan (CNMP). The CNMP shall be approved by a certified CNMP provider. At a minimum, a

CNMP shall include best management practices and procedures necessary to implement applicable effluent limitations and technical standards established by the department including all of the following:

- (i) Ensure adequate storage of production area waste and CAFO process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities.
- (ii) Ensure proper management of mortalities and ensure that they are not disposed of in a liquid manure, storm water, or CAFO process wastewater storage or treatment system.
- (iii) Ensure clean water is diverted from the production area.
- (iv) Prevent direct contact of confined animals with waters of the state.
- (v) Ensure chemicals and other contaminants handled at the CAFO, that are not part of the normal agricultural practice at the production area, are not disposed of in any production area waste, CAFO process wastewater, or storm water storage or treatment system.
- (vi) Identify specific conservation practices to control runoff of pollutants to waters of the state.
- (vii) Identify protocols for testing of production area waste, CAFO process wastewater, and soil.
- (viii) Conduct a field-by-field assessment of land application areas and address the form, source, amount, timing, rate, and method of application of nutrients to demonstrate that land application of production area waste or CAFO process wastewater is in accordance with field-specific nutrient management practices that ensures proper agricultural utilization of the nutrients in the production area waste or CAFO process wastewater. The assessment shall take into account field-specific conditions including locations of tile outlets, tile risers, and tile depth before land application to determine suitability of land application and to prevent discharge of any potential polluting material.
- (ix) Ensure proper land application by complying with all of the following conditions:
  - (A) Production area waste and CAFO process wastewater shall not be land-applied on ground that is flooded, saturated with water, frozen, or snow-covered where the production area waste and CAFO process wastewater may enter waters of the state.
  - (B) Production area waste and CAFO process wastewater shall not be applied to frozen or snow-covered ground unless it is subsurface injected and there is substantial soil coverage of the applied production area waste and CAFO process wastewater, or it is surface-applied and incorporated within 24 hours.
  - (C) Production area waste and CAFO process wastewater may be surface-applied to frozen or snow-covered ground and not incorporated within 24 hours only if there is a field-by-field demonstration in the CNMP showing that such land application will not result in a situation where production area waste and CAFO process wastewater may enter waters of the state.
  - (D) Production area waste and CAFO process wastewater shall not be applied when precipitation exceeding ½ inch is forecast within 24 hours or if precipitation is forecast that may cause the production area waste and CAFO process wastewater to enter waters of the state.
  - (E) On ground that is not frozen or snow-covered, production area waste and CAFO process wastewater, if not subsurface-injected, shall be incorporated into the soil within 24 hours of application except on no-till fields.
- (x) Identify specific records that will be maintained to document the implementation and management of the CNMP.
  - (b) A copy of the CAFO's CNMP shall be maintained at the CAFO and made available to the department on request. In addition, the executive summary shall be submitted to the department.
  - (c) A prohibition on dry weather discharges from the CAFO except in accordance with 40 C.F.R. §412.31(a)(2) (2003) or 40 C.F.R. §412.46(d) (2003).

(d) Storm water discharges from land areas under the control of a CAFO where production area waste or CAFO process wastewater has been applied in compliance with field-specific nutrient management practices developed in accordance with R 323.2196(5)(a), and such discharges do not cause or contribute to a violation of water quality standards, are in compliance with this rule, provided such discharges are authorized by an NPDES permit.

(e) Unless the department determines otherwise, in cases where production area waste or CAFO process wastewater is sold, given away, or otherwise transferred to other persons (recipient) and the land application of that production area waste or CAFO process wastewater is not under the operational control of the CAFO owner or operator that generates the production area waste or CAFO process wastewater (generator), a manifest shall be used to track the transfer and use of the production area waste or CAFO process wastewater.

(i) The CAFO owner or operator shall do all of the following:

(A) Prepare a manifest for tracking the production area waste or CAFO process wastewater before transferring the production area waste or CAFO process wastewater.

(B) Designate on the manifest the recipient of the production area waste or CAFO process wastewater.

(ii) The generator shall use a manifest form which is approved by the department and which has locations for recording all of the following information:

(A) A manifest document number.

(B) The generator's name, mailing address, and telephone number.

(C) The name and address of the recipient of the production area waste or CAFO process wastewater.

(D) The nutrient content of the production area waste or CAFO process wastewater to be used in determining the appropriate land application rates.

(E) The total quantity of production area waste or CAFO process wastewater by units of weight or volume and the number and size of the loads or containers used to transfer that quantity of production area waste or CAFO process wastewater.

(F) A statement that informs the recipient of his or her responsibility to properly manage the land application of the manure and/or wastewater to minimize the discharge of pollutants to waters of the state.

(G) The following certification: "I hereby declare that the production area waste or CAFO process wastewater is accurately described above and is suitable for land application."

(H) Other certification statements as may be required by the department.

(I) Address or other description for the final destination of the production area waste or CAFO process wastewater.

(J) Locations for dates and signatures.

(iii) The generator shall do all of the following with respect to the manifest:

(A) Sign the manifest certification by hand.

(B) Obtain the handwritten signature of the recipient and the date of acceptance on the manifest.

(C) Retain 1 copy of the manifest.

(D) Give the remaining copies to the recipient.

(E) Advise the recipient of his or her responsibilities to complete the manifest and return a copy to the generator within 30 days after completion of the land application or other disposal or use of the production area waste or CAFO process wastewater.

(iv) One manifest may be used for multiple loads or containers of the same production area waste or CAFO process wastewater transferred to the same recipient.

(v) The generator shall not sell, give away, or otherwise transfer production area waste or CAFO process wastewater to a recipient if any of the following occurs:

(A) The recipient has previously not returned a copy of the completed manifest to the generator.

(B) The returned manifest indicates improper land application, use, or disposal.

(C) The generator has been advised by the department that the department or a court of appropriate jurisdiction has determined that the recipient has improperly land-applied, used, or disposed of a manifested production area waste or CAFO process wastewater.

(D) The recipient fails or refuses to provide accurate information on the manifest in a timely manner.

(vi) If the generator has been prohibited from selling, giving, or otherwise transferring large CAFO waste to a particular recipient under paragraph (v), above, and the generator wishes to resume selling, giving, or otherwise transferring large CAFO waste to that particular recipient, then the one of the following shall be accomplished:

(A) For improper paperwork only, such as incomplete or inaccurate information on the manifest, the recipient must provide the correct, complete information.

(B) For improper land application, use, or disposal of the large CAFO waste by the recipient, the generator must demonstrate, in writing, to the department that the improper land application, use, or disposal has been corrected, and the department has provided approval of the demonstration.

(vii) All copies of manifests shall be kept with the CAFO owner or operator's CNMP for a minimum of 5 years.

(viii) The requirements of this rule do not apply to quantities of production area waste or CAFO process wastewater less than 1 pick-up truck load, 1 cubic yard, or 1 ton per recipient per day.

(f) A requirement that the CAFO owner or operator shall submit annual reports to the department. The annual report shall include, but is not limited to, all of the following:

(i) The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, and turkeys).

(ii) Estimated amount of total production area waste and CAFO process wastewater generated by the CAFO in the previous 12 months (tons/gallons).

(iii) Estimated amount of total production area waste and CAFO process wastewater transferred to another person by the CAFO in the previous 12 months (tons/gallons).

(iv) Total number of acres for land application covered by the CNMP developed in accordance with subdivision (a) of this subrule.

(v) Total number of acres under control of the CAFO that were used for land application of production area waste and CAFO process wastewater in the previous 12 months.

(vi) Summary of all production area waste and CAFO process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume.

(vii) A statement indicating whether the current version of the CAFO's CNMP was developed or approved by a certified CNMP provider.